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April 6, 2009

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 Chris Carr
 State Water Resources Control Board
 Division of Water Rights
 Cal/EPA Headquarters
 1001 "I" Street
 Sacramento, CA 95814

**Re: Comment Letter - Southern Delta Salinity/San Joaquin
 River Flow WQCP Workshop**

Dear Mr. Carr:

On behalf of the County of San Joaquin and the San Joaquin County Flood Control and Water Conservation District (collectively hereinafter the "County"), we submit the following comments regarding the Public Staff Workshop for the Consideration of Potential Amendments to the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary Relating to Southern Delta Salinity and San Joaquin River Flow Objectives.

The County responds to the specific questions presented in the Notice of Public Workshop regarding matters for discussion in the Workshop.

1. What should the salinity objectives be to protect agricultural beneficial uses in the southern Delta and where and when should those objectives apply?

The County submits that the current salinity objectives in the southern Delta to protect agricultural beneficial uses are necessary and should not be altered and especially not relaxed. Rather they need to be enforced.

The existing salinity objectives were established in the 1978 Delta Plan. Salinity concerns in the South Delta exist as a result of a variety of factors which have been well documented and continuously studied and analyzed over the years. These factors existed in 1978 when the 1978 Delta Plan was adopted and the salinity objectives were initially imposed and these factors were re-evaluated in Water Right Decision D 1641 (D 1641)

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adopted in 2000. The County contends that the agricultural uses within the Delta continue to require the protection identified by the current salinity objectives and that such objectives need to be met to protect agricultural beneficial uses within the Delta.

The salinity objectives are the product of many years of sound research. The studies and research determined that a standard of 0.7 mmhos/cm electrical conductivity (EC) was needed in part due to the wide variety of soil conditions (more than 70 types) in the region that have different permeability qualities and leach fractions which require a 0.7 EC level in order to prevent crop damage and decreased crop yields within the Delta. Such things as low permeability and shallow groundwater present unique problems. The County contends that such analysis will continue to support a salinity objective within the Delta of at the most 0.7 EC. In order to ensure such level of protection exists throughout the Delta several monitoring or measuring locations need to remain, such as at the minimum the current three interior Delta measuring locations.

Due to the condition of the San Joaquin River and the salinity levels within the River as it reaches and flows through San Joaquin County, no assimilative capacity remains for legal discharges within the County. This impacts legal agricultural diverters along the San Joaquin River and within the Delta and dischargers and municipal discharges such as the cities of Manteca, Tracy, and Stockton, located within the County. Any negative changes to the salinity objectives will impact the already diminished assimilative capacity of the San Joaquin River and potentially impact these legal discharges and diverters. The impacts of these legal dischargers need to be accounted for and the regulatory system needs to allow for such continued legal discharges.

Minimum water flows are necessary to support agricultural uses within the Delta both as to quantity and quality. Due to the impacts of the CVP and SWP export pumps and the decreased natural flow of the San Joaquin River, water levels and flow within the Delta are altered and at many times greatly reduced. Adequate water levels are necessary to support fish and wildlife within the Delta and to provide legal and senior water right diversions and uses within the Delta. Portions of the Delta, including Middle River, have extremely low flows and even go dry at certain times of the year. This precludes legal, senior water right holders and parties protected by the Delta Protection Statues and Area of Origin Statues from exercising their water rights. Minimum water flows and minimum water levels must be protected by any water quality and water rights amendments by the State Water Board.

2. What should the program of implementation be for the southern Delta salinity objectives?
 - a. The obligation to meet the necessary salinity objectives in the southern Delta should be borne by those parties which create the salinity problem in the southern Delta.

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The burden of such obligations should be proportional to the amount a water right holder contributes to the existing water quality problem. Apportionment, balancing or sharing of the water quality burden must be equitable and supported by facts.

The responsibility to meet the Delta salinity objectives was most recently analyzed in D 1641. The County submits these conclusions are still accurate and valid and need to be implemented in any future water right decision affecting the Delta. Regarding the responsibility to meet the Delta salinity objectives the State Water Board in D 1641 summarizes as follows:

“Salinity problems in the southern Delta result from low flows in the San Joaquin River and discharges of saline drainage water to the river. The actions of the CVP are the principal causes of the salinity concentrations exceeding the objectives at Vernalis. Downstream of Vernalis, salinity is influenced by San Joaquin River inflow, tidal action, diversions of water by the SWP, CVP, and local water users, agricultural return flows, and channel capacity. Measures that affect circulation in the Delta, such as barriers, can help improve the salinity concentrations.” D 1641 at p. 89.

D 1641 continues stating that the circulation problems in the Delta are caused by “. . . export pumping by the SWP and CVP and in-Delta diversions in the southern Delta [which] cause null zones, areas with little or no circulation.” D 1641 at p. 87. It is the County’s contention that these conclusions and environmental conditions have not changed substantially since D 1641 and any new water right or water quality decision must implement these findings.

- b. New Melones should not be disproportionately meeting the salinity obligations.

Currently and historically efforts to meet the salinity objectives at Vernalis and within the southern Delta have been almost exclusively through releases of fresh water from New Melones. This practice cannot continue and the State Water Board must impose conditions of implementation to require operational changes. First, New Melones and the Stanislaus River does not contribute to the salinity problems within the San Joaquin River and the south Delta to the proportion of its contributions to the problem. The practice of providing substantial Stanislaus River flows to meet the water quality (and fish flow requirements) deprives the San Joaquin County parties who contract with the Bureau for Stanislaus River water most of their contracted water while in most years the Bureau contractors who are largely responsible for the salinity problems as identified in D 1641 continue to receive water deliveries from the Bureau. This deprives the County users, a

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watershed of origin, of water which is critically needed for the area and to improve the critically overdrafted groundwater basin within eastern San Joaquin County.

In addition, reliance on New Melones for dilution flows to meet the Delta salinity objectives is inconsistent with the directives of HR 2828 (Public Law 108-261, signed by the President October 25, 2004) which contains important direction for the Secretary of Interior and Reclamation regarding the operation of New Melones Reservoir. The State Water Board should recognize this federal mandate and impose an alternate plan of implementation consistent with the directives of HR 2828.

HR 2828 provides that the Secretary of Interior “shall update the New Melones operating plan to take into account, among other things, the actions described in this title that are designed to reduce reliance on New Melones Reservoir for meeting water quality and fishery flow objectives, and to ensure that actions to enhance fisheries in the Stanislaus River are based on the best available science.” HR 2828 Sec. 103(d)(2)D(vii). Any water right decision by the State Water Board should take into consideration the implementation by the Bureau of this Congressional mandate.

3. What should the San Joaquin River flow objectives be to protect fish and wildlife beneficial uses and where and when should those objectives apply?

Fish flow objectives of the San Joaquin River should be based on sound science and actual biological conditions. The current fish flow objectives were due to a negotiated solution of the Principles for Agreement in which parties within the Delta and the tributaries were not a part. The San Joaquin River flows were set without any biological assessment or scientific justification. Standards need to be based on science. Since the adoption of the 1995 Water Quality Control Plan and the adoption of D1641 more information is available which should be taken into consideration when setting San Joaquin River Flows. Fish need to be protected and flow is crucial to that protection; however, flow requirements need to be based on best available science and not just providing water without any known potential benefit.

The Vernalis Adaptive Management Plan (VAMP) was designed and approved by the State Water Board to be an “experiment” to gather information to better protect and address fish flow needs. The information gathered from VAMP needs to be analyzed and utilized to establish any future flow requirements.

In addition, during the recent Emergency Drought Hearing regarding X2 flows, it was indicated that the very complex and difficult to determine X2 formula required an unusual amount of water in 2009, which did not particularly meet the realities of this water year. Adjustment of this standard and the formula to determine the appropriate water flows in years like 2009 may be appropriate. Relying on actual information gathered in this year could be used to develop a more appropriate formula for determining

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the X2 requirements. Such consideration is proper in this proceeding with appropriate environmental and scientific review, rather than in the emergency proceeding.

4. What should the program of implementation be for the San Joaquin River flow objectives?

Any obligations to meet fish flow requirements should be imposed following an evaluation of the adverse impacts contributed by water right holders. Responsibility of meeting any flow requirements needs to be imposed only on the water right holders who are responsible for adversely impacting the watershed in proportion to their contribution to such impacts. To the extent obligations are imposed on the CVP and SWP, all CVP and SWP facilities should contribute to the flow objective. Friant and San Luis need to contribute to any requirements and cannot continue to be excluded from contributing to meeting their appropriate obligations.

Thank you for providing an opportunity for the County to submit comments to the State Water Board regarding the Southern Delta Salinity and San Joaquin River Flows.

Very truly yours,



DeeAnne Gillick
Attorney at Law

DMG/

cc: C. Mel Lytle
David Wooten
Thomas J. Shephard, Sr.